



Amendment to Section 10(38) of the Income Tax Act
June 2017

Brahmayya&co.

www.brahmayya.com

Introduction

Section 10 (38) of the Income Tax Act provides that income arising from transfer of long term capital asset, being equity shares in any company shall be exempt from tax, if such transfer is done after 1st October 2004 and such transaction is chargeable to Securities Transaction Tax (STT). The provision has been grossly misused by assesseees for money laundering and declaring unaccounted income as exempt income.

In order to curb such malpractices of declaring unaccounted income as Long Term Capital Gain by entering into Sham Transactions, Finance Act, 2017 has amended Section 10 (38) of the Income Tax Act. Accordingly, exemption under this section for income arising on transfer of equity shares acquired on or after 1st October, 2004 shall be available only if the acquisition of such shares is chargeable to STT. However, to protect exemption for genuine cases, where the STT could not have been paid, it was also provided that the Central Government shall notify the acquisition for which the condition of chargeability to STT shall not apply. Accordingly, CBDT has notified all transactions of acquisition of equity shares entered into on or after 1st October, 2004 which are not chargeable to STT, vide notification dated 5th June 2017.

No exemption

In respect of the following acquisitions, exemptions will NOT be available :

- a) Acquisition of existing listed equity share in a company whose equity shares are not frequently traded in a recognized stock exchange of India by way of a preferential issue
- b) Acquisition of existing listed equity share in a company, not entered through a recognised stock exchange of India
- c) Acquisition of shares of company during the period of its delisting

However, to protect the interest of genuine investors, certain exclusions are also provided to the transactions covered under item (a) and item (b) above.

Exclusions to Clause (a)

Acquisition of shares under approval of the Supreme Court, High Court, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India.

- Acquisition of shares by non-resident in accordance with the FDI guidelines
- Acquisition of shares by an Investment fund or a Venture Capital Fund or a Qualified Institutional Buyer
- Acquisition of shares through a preferential issue to which the provisions of chapter VII of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 do not apply

Amendment to Section 10(38) of the Income Tax Act

Exclusions to Clause (b)

- Acquisition through an issue of share by a company other than preferential issue mentioned in this notification
- Acquisition by scheduled banks, reconstruction or securitization companies or public financial institutions during their ordinary course of business
- Acquisitions approved by the Supreme Court, High Courts, National Company Law Tribunal, SEBI or RBI
- Acquisition under employee stock option scheme or employee stock purchase scheme framed under SEBI Guidelines
- Acquisition by any non-resident under FDI guidelines
- Acquisition of shares under SEBI Takeover regulations
- Acquisition from the Government
- Acquisition of shares by an Investment fund or a Venture Capital Fund or a Qualified Institutional Buyer
- Acquisition by mode of transfer referred to in sections 47 or 50B of the Income Tax Act if the previous owner of such shares has not acquired them by any mode which is not eligible for exemption as per this notification

Conclusion

This notification shall come into force with effect from 1st April 2018 and shall accordingly apply to AY 2018-19 onwards. The notification is a welcome step and CBDT has provided reasonable clarity through this amendment, however certain transactions still continue to be ambiguous such as issue of shares against the warrant, strategic acquisition by private investor, issue of shares on settlement of dues under debt restructuring. Further clarification is expected from CBDT in the due course.

CHENNAI

48, Masilamani Road, Balaji
Nagar, Royapettah, Chennai -
600014.
Phone: +91 - 044 - 28131 128/38/48
Fax: +91 - 28131158

BENGALURU

Khivraj Mansions, 10/2 Kasturba Road,
Bangalore - 560001.
Phone: +91 - 080 - 22274 551/52
Fax: +91 - 22212437

VISAKHAPATNAM

1-88-19, Plot No: 135/4,
Sector 4, MVP Colony,
Visakhapatnam 53017
Phone: (0891) 2755821 & 2755848,
Fax: (0891) 2755848

GUNTUR

10-3-21, 3rd Lane, Sambasivapet,
Guntur - 522001.
Phone: +91 - 863 - 2220347/2224924
Fax: +91 - 2220347

TANUKU

22-29/5 Gubbalavari Street, Society Road,
Tanuku - 534211.
Phone: +91 - 8819 - 221 234/224 911

HYDERABAD

No 403&404, Golden
Green Apartments, Erra
Manzil Colony,
Hyderabad - 500082.
Phone: +91 - 040 - 23370 002/04
Fax: 23379988

GURGAON (New Delhi)

404, DLF City Court,
Sikandarpur, MG Road,
Gurgaon,
Haryana - 122002
Phone :+91 - 0124 - 4235 522

VIJAYAWADA

No 33-25-33/3, Govinda
Rajulu Naidu Street, Surya
Rao Pet, Vijayawada -
520010.
Phone: +91 - 866 - 2444 592/93/94

KAKINADA

3-16C-40/1, 8th Road, Santhi Nagar,
Kakinada - 5330003.
Phone: +91 - 884 - 2374 402/04
Fax: +91 - 2374 402, 2363 656

ADONI

142/6, Sri Krishnadevaraya Colony, Adoni -
518301.
Phone: +91 - 8512 - 253 447/222 377
Fax: +91 - 253447

Brahmayya & co.

www.brahmayya.com